

**A RESOLUTION RECOGNIZING THE VALUE OF EXISTING LEGAL NON-CONFORMING USES**

WHEREAS, the 25 Neighborhood Planning Units (NPU) are the official organized citizen advisory input groups for the City of Atlanta, and the Atlanta Planning Advisory Board (APAB) is the umbrella group made up of the NPUs; and

WHEREAS, the city is currently engaged in a zoning rewrite process that proposes to make sweeping changes to the city's existing zoning code; and

WHEREAS, in initial public meetings regarding the rewrite, nonconforming uses have been discussed as being intrinsically problematic; and

WHEREAS, diversity of uses and built forms on many scales creates a desirable urban environment and is responsible for the unique character of many of Atlanta's neighborhoods; and

WHEREAS, maintaining extant legal non-conforming uses (i.e. "grandfathered" non-conformities) as non-conforming uses or otherwise restricting their expansion and replication rather than encouraging them to supplant other extant uses by making them conform helps to maintain the diversity of the city; and

WHEREAS, forms and uses which are desirable in specific contexts and circumstances may not be similarly desirable if they are universally permitted and widely replicated under different circumstances; and

WHEREAS, the only way to constitutionally eliminate legal nonconforming uses may be to permit them, as removing them without their owners' consent may amount to an illegal taking<sup>\*</sup>; and

WHEREAS, many of the city's residential zoning districts contain legal non-conforming uses such as accessory dwelling units, duplexes, triplexes, quadraplexes, small multi-unit apartments, and limited commercial or light-industrial uses which add to their current character in ways both good and bad; and

WHEREAS, the non-conforming nature of these uses means that they cannot be legally expanded or replicated in the districts where they currently exist; and

WHEREAS, the inability to legally expand or replicate these uses by right adds value to them that encourages their upkeep and maintenance as well as the civic engagement of their owners; and

WHEREAS, the need for special permission (legislation) and public review in order to legally expand or replicate these uses provides a check on their uncontrolled growth as well as a mechanism to permit that growth where it is deemed desirable; and

WHEREAS, permitting the unlimited replication of extant legal non-conforming uses by right would encourage a race to the bottom in cost and quality among the owners of property in the districts where this is permitted as well as encouraging the destruction of desirable, but less profitable, conforming uses; and

WHEREAS, in many of Atlanta's single-family neighborhoods with a significant number of legal non-conforming uses, the decision to change the underlying zoning classification (e.g. from R-5 to R-4A) that rendered these uses nonconforming was a conscious choice that was approved overwhelmingly by the community and has led to an improvement in the quality of life, a related increase in the residential density, a related increase in property tax revenue, and a related increase in the diversity of these neighborhoods<sup>†</sup>; and

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<sup>\*</sup> This was one of the stated reasons for the city council's rejection of proposed ordinances 12-O-1599 and 12-O-1600

<sup>†</sup> See e.g. 00-O-0572

WHEREAS, many current residents, business owners and landlords in the city chose their current roles and locations based, in part, on the existing zoning strictures governing their communities and the existing built forms in their communities; and

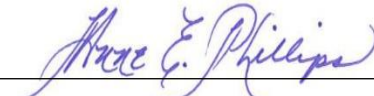
WHEREAS, the city government of Atlanta is intended to serve the interests of extant residents and business owners rather than would-be developers or imagined future residents;

NOW, THEREFORE, BE IT RESOLVED by the membership of The Atlanta Planning Advisory Board (APAB) in the City of Atlanta, Georgia;

That APAB calls upon the Atlanta Planning Department to acknowledge the value of legal non-conforming uses by virtue of their nonconformity and to consider the desires of the communities containing them that they not be permitted by right to be replicated and expanded without limit in any newly created or modified zoning districts where the extant examples are converted into conforming uses. As a reasonable alternative to this, in cases where limited replication or expansion is deemed to be appropriate limitations such as permissible proximity to similar or incompatible uses or special-use permit requirements should be considered.

*Resolution Adopted by APAB this 16<sup>th</sup> Day of July, 2022*

*Resolution of the APAB CDHS/Zoning Committee*  
James Martin, Chair  
[james.martin@me.gatech.edu](mailto:james.martin@me.gatech.edu) 404/351-6949



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**2022 APAB President**